

FEB 03 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of
Anthony G. Picardo
Serial No. 09/574,688

Atty. Docket
PH US000423
Examiner: M. Bockelman

Filed: May 17, 2000

GAU: 3762

Title: SMART MEDICAL CONNECTOR SYSTEM AND METHOD OF USE

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313

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FEB 09 2004

PETITION UNDER 37 CFR 1.181 TO
WITHDRAW NOTICE OF ABANDONMENT

TECHNOLOGY CENTER R3700

Sir:

Applicant respectfully requests the Commissioner for Patents to restore the subject application to pending status on the ground that Applicant did respond in a timely manner to the Office Letter mailed by the Patent Office in this case on June 26, 2003. Applicant filed a Response to Office Action in this case on July 15, 2003, transmitted by facsimile, in timely response to the Office Action dated June 26, 2003.

Attached as Exhibit 1 is a copy of the Notice Of Abandonment dated January 7, 2004.

Attached as Exhibit 2 is the Response to Office Action with the Certificate of Mailing or Transmission on the first page of the Response signed by Elissa DeLuccy on July 15, 2003, with the box beside the facsimile transmission statement clearly marked.

Attached as Exhibit 3 is a copy of the Auto-Reply Facsimile Transmission from the Patent Office showing the first page of the Response to Office Action. The Auto-Reply page date stamp evidences that the PTO received the Response on July 15, 2003, at 3:07:09 PM EDT, and that the transmission consisted of 3 pages.

FEE

The Commissioner is hereby authorized to charge Deposit Account No. 14-1270 for any petition fee, which may be due. However, since it is believed that the holding of abandonment is the result of circumstances not attributable to any fault by Applicant or his representative, it is respectfully suggested that no fee is due.

Applicant's undersigned attorney may be reached by telephone at (425) 487-7152. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

By W. Brinton Yorks, Jr.
W. Brinton Yorks, Jr., Reg. 28,923
Philips Electronics
22100 Bothell Everett Highway
Bothell, WA 98021
(425) 487-7152

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited this date with the United States Postal Service as first-class mail in an envelope addressed to:
COMMISSIONER FOR PATENTS
PO Box 1450
Alexandria, VA 22313

On 30 January 2004
(Mailing Date)

By Joe Ristrop
(Signature)



UNITED STATES PATENT AND TRADEMARK OFFICE

YORKLS
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

US000423

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/574,688	05/17/2000	Anthony G. Picardo	10001826.1	8758
24737	7590	01/07/2004		
PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510				
			EXAMINER	
			BOCKELMAN, MARK	
			ART UNIT	PAPER NUMBER
			3762	

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JAN 15 2004

J. PEISTRUP

DATE MAILED: 01/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



04 JAN 12 AM 10:12
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TECHNOLOGY CENTER R3700

DOCKETED	DATE	INITIAL
COMPUTER	JP JAN 31 2004	
SECRETARY		
ATTORNEY		

Notice of Abandonment	Application No.	Applicant(s)
	09/574,688	PICARDO ET AL.
	Examiner Mark W Bockelman	Art Unit 3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

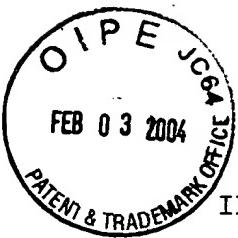
This application is abandoned in view of:

1. Applicant's failure to timely file a proper reply to the Office letter mailed on 26 June 2003.
 - (a) A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) No reply has been received.
2. Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) The issue fee and publication fee, if applicable, has not been received.
3. Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) No corrected drawings have been received.
4. The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. The reason(s) below:

RENEW DOCUMENTATION

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Exh. 1



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Atty. Docket

ANTHONY PICARDO

US 000423

Appln. No. 09/574,688

Group Art Unit 3762

Filed: May 17, 2000

Examiner Mark Bockleman

Title: SMART MEDICAL CONNECTOR SYSTEM AND METHOD OF USE

Assistant Commissioner of Patents and Trademarks
Alexandria, VA 22313-1450

TECHNOLOGY CENTER R3700

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[] deposited with the U.S. Postal Service with sufficient postage as first-class mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

[X] transmitted by facsimile to the U.S. Patent and Trademark Office at 703-872-9302

On: July 15, 2003

By: Elissa De Luccy

RESPONSE TO OFFICE ACTION

Sir:

In response to the Office Action dated June 26, 2003, Applicants respectfully point out that the current restriction requirement (group I (claims 1-7) and group II (claims 10-12) is inconsistent with the election requirement required in the Office Action dated March 13, 2003. In particular, the Office Action dated March 13, 2003, acknowledges that the scope of independent Claims 1, 10 and 17 are within Species I (a medical connector and method of use using an identifier that alters light received).

MPEP 806.04(e) states that species must be specifically different embodiments. Since the March 13, Office Action

states that no claim is generic, according to the Office Action; no single claim covers more than one embodiment.

However, the Office Action dated June 26, 2003 imposes a restriction requirement¹ within a single species. It is not seen how claims within the scope of one specific species can define independent and distinct inventions.

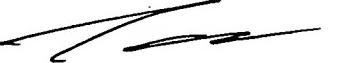
In addition, MPEP 811 states that before making a restriction requirement after a first office action on the merits, the examiner should consider whether there would be a serious burden if restriction were not required. In the present case, it is highly likely that a single search may locate prior art, if any, relevant to both Groups I and II. It is also noted that the combination (claims 10-12) substantially includes all the features of the subcombination (claims 1-7). Accordingly, it is respectfully submit that there would be no serious burden if the restriction were not required.

In any event, Applicants' request clarification regarding the election/restriction requirements so that an appropriate election/restriction can be made.

¹ It is also noted that Claims 17-32 were not addressed in the Office Action dated June 26, 2003.

Applicants' undersigned attorney may be reached by telephone at the number given below.

Respectfully submitted,

By 
Tony E. Piotrowski,
Reg. 42,080
(914) 333-9609

*** TX REPORT ***

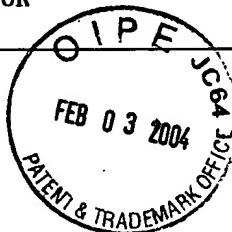
TRANSMISSION OK

TX/RX NO 1596
CONNECTION TEL 917038729302
CONNECTION ID
ST. TIME 07/15 15:07
USAGE T 01 '03
PGS. SENT 3
RESULT OK

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FEB 09 2004

TECHNOLOGY CENTER R3700



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Atty. Docket

ANTHONY PICARDO

US 000423

Appln. No. 09/574,688

Group Art Unit 3762

Filed: May 17, 2000

Examiner Mark Bockleman

Title: SMART MEDICAL CONNECTOR SYSTEM AND METHOD OF USE

Assistant Commissioner of Patents and Trademarks

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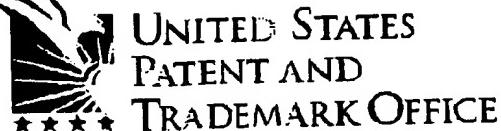
[X] transmitted by facsimile to the U.S. Patent and Trademark Office at 703-872-9302

On: July 15, 2003By: Elissa De LuccyRESPONSE TO OFFICE ACTION

Sir:

In response to the Office Action dated June 26, 2003, Applicants respectfully point out that the current restriction requirement (group I (claims 1-7) and group II (claims 10-12) is inconsistent with the election requirement required in the Office Action dated March 13, 2003. In particular, the Office

Auto-Reply Facsimile Transmission



TO: Fax Sender at 914 332 0615

Fax Information
Date Received:
Total Pages:7/15/03 3:07:09 PM [Eastern Daylight Time]
3 (including cover page)

ADVISORY: This is an automatically generated return receipt confirmation of the facsimile transmission received by the Office. Please check to make sure that the number of pages listed as received in Total Pages above matches what was intended to be sent. Applicants are advised to retain this receipt in the unlikely event that proof of this facsimile transmission is necessary. Applicants are also advised to use the certificate of facsimile transmission procedures set forth in 37 CFR 1.8(a) and (b), 37 CFR 1.6(f). Trademark Applicants, also see the Trademark Manual of Examining Procedure (TMEP) section 306 et seq.

Received
Cover
Page
=====>

07/15/03 TUE 15:07 FAX 914 332 0615 PHILIPS ELECTRONICS 0001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of Atty. Docket
ANTHONY PICARDO US 030423
Appn. No. 09/574,688 Group Art. Unit 3762
Filed: May 17, 2000 Examiner Mark Bockleman
Title: SMART MEDICAL CONNECTOR SYSTEM AND METHOD OF USE
Assistant Commissioner of Patents and Trademarks
Alexandria, VA 22313-1450

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 Transferred by facsimile to the U.S. Patent and Trademark Office at 703-872-9302

On July 15, 2003
By: Elaine DeLucy

RESPONSE TO OFFICE ACTION

Sir:

In response to the Office Action dated June 26, 2003, Applicants respectfully point out that the current restriction requirement (group I (claims 1-7) and group II (claims 10-12) is inconsistent with the election requirement required in the Office Action dated March 13, 2003. In particular, the Office Action dated March 13, 2003, acknowledges that the scope of independent claims 1, 10 and 17 are within Species I (a medical connector and method of use using an identifier that alters light received).

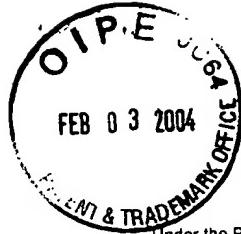
MPBP 806.04(e) states that species must be specifically different embodiments. Since the March 13, Office Action

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17 2003

Exh. 3



9200/3762
JAC

Please type a plus sign (+) inside this box → **[+]**

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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

		Application Number	09/574,688
		Filing Date	May 17, 2000
		First Named Inventor	Anthony G. Picardo
		Group Art Unit	3762
		Examiner Name	M. Bockelman
Total Number of Pages in This Submission	11	Attorney Docket Number	US000423

ENCLOSURES (check all that apply)

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Assignment Papers (for an Application)	<input type="checkbox"/> After Allowance Communication to Group
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment / Reply	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input checked="" type="checkbox"/> Petition	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	<input type="checkbox"/> Receipt Confirmation Postcard
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Response to Missing Parts/ Incomplete Application		
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		
Remarks		

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	W. Brinton Yorks, Jr.	Reg. #28,923
Signature		
Date	1/30/04	

CERTIFICATE OF MAILING

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Typed or printed name	Jill Peistrup
Signature	
Date	30 January 2004

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